

Date of Decision: 03.08.2021.

...Petitioner

...Respondent

Present: Mr. Paras Jagga, Advocate for the petitioner.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

2. Prayer in the petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.29 dated 03.03.2020, registered under Section 22-B (Notification No.61), NDPS Act, 1985, at Police Station Rori, District Sirsa.

3. Learned counsel contends that the petitioner has been implicated in the instant case solely on the basis of disclosure statement of Chhinda Singh from whom 400 tablets of tramadol hydrochloride were recovered on his arrest on 03.03.2020, whereafter the petitioner was arrested on 05.03.2020 and he in turn made a disclosure statement while in police custody of having purchased the contraband from one Nirmal Singh. Learned counsel contends that apart from the disclosure statement of Chhinda Singh, there is no other material to connect the petitioner with the commission of the offence nor has any recovery of contraband been made from him nor the petitioner is involved in any other case under the

NDPS Act besides co-accused, Nirmal Singh had been released on pre-arrest bail vide order dated 04.08.2020, in CRM-M-12187-2020. Learned counsel contends that the petitioner was released on interim bail vide order dated 28.07.2020, in CRM-M-16812-2020 to await the report from the FSL authorities in view of the decision of Hon'ble the Division Bench in *Inderjeet Singh alias Laddi vs. State of Punjab* 2014 (3) RCR (Crl.) 953, but pursuant to receipt of the report, the petitioner surrendered and is in custody. Learned counsel contends that the investigation is complete, challan has been presented though charges are yet to be framed, therefore, no useful purpose would be served by keeping the petitioner in custody as the trial is likely to take long time to conclude. Learned counsel further contends that implication of the petitioner in the commission of offence solely on the basis of disclosure statement of co-accused Chhinda Singh besides the alleged confession/disclosure statement made by the petitioner while in police custody is legally unsustainable in view of the decision of Hon'ble the Supreme Court in *Tofan Singh versus State of Tamil Nadu* 2021(1) RCR (Crl.) 1 and *Hari CharanKurmi Vs. State of Bihar*, 1964 AIR (SC) 1184.

4. Learned Addl. AG, Haryana, on instructions from ASI Bhal Singh, confirms that apart from the disclosure statement of co-accused Chhinda Singh of having been supplied the contraband by the petitioner and thereafter of the petitioner having made a disclosure/confessional statement to the police on his arrest of having purchased the contraband from co-accused, Nirmal Singh, besides recovery of Rs.1000/- there is no

other material to implicate the petitioner in the commission of the offence besides the petitioner is not involved in any other case under the NDPS Act.

5. I have considered the submissions of learned counsel for the parties.

6. Admittedly, the petitioner is arrayed as an accused in the instant case on the basis of disclosure statement of co-accused, Chhinda Singh, from whom on his arrest, 400 tablets of tramadol hydrochloride were recovered, besides the confession/disclosure statement of the petitioner while in police custody admitting having purchased the contraband from co-accused, Nirmal Singh but the said Nirmal Singh was granted pre-arrest bail vide order dated 04.08.2020, in CRM-M-12187-2020.

7. Hon'ble the Supreme Court in Tofan Singh's case (supra), has held that a confessional statement made to a police officer cannot be taken into account to convict an accused under the NDPS Act in view of Section 25, Evidence Act whereas in **Hari Charan Kurmi's case (supra)**, it was held that mere confession of co accused is not enough to implicate an accused except where there is other satisfactory evidence to sustain the charge against said accused person, in which eventuality, the confession can be used by the court to assure itself that the conclusion which it is inclined to draw from the other evidence is right. Relevant extract of the aforementioned decision's are reproduced asunder:-

Tofan Singh's case (Supra)

"155. We answer the reference by stating :

(i) That the officers who are invested with powers under Section 53 of the NDPS Act are “Police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.”

Hari Charan Kurmi’s case (Supra):-

“.....Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30.....”

Tofan Singh’s decision was followed by a Co-ordinate Bench of this Court in ‘*Rakesh Kumar Singla versus Union of India*’ in CRM-MNo.23220 of 2020, decided on 14.01.2021. Apart from the disclosure statement of co accused as well as disclosure statement / confession by petitioner and recovery of Rs. 1000/- there is no material to connect the petitioner with the commission of the offence. Although, recovery in the case is of commercial quantity, yet the bar under Section 37 would not be attracted in view of the petitioner not having been arrested from the site,

there being no recovery of contraband from him, besides inview of the only material relied upon by the State being of disclosurestatement of co accused and confession / disclosure by petitioner whilein police custody, it can reasonably be assumed that the petitioner is notinvolved in the commission of the offence besides on account of his notbeing involved in any other case under the NDPS Act, 1985 it can bereasonably assumed that he is not likely to commit any offence under theNDPS Act, 1985 while on bail. Moreover, investigation is complete,challan has been presented and the petitioner is behind bars since 05.03.2020, though charges are yet to be framed, consequentially, trialof the case is likely to take time. Accordingly, I am of the view that nouseful purpose would be served by keeping the petitioner behind bars.Resultantly, the petition for regular bail is **allowed** and the petitioner isordered to be released on regular bail during the pendency of the trial,subject to his furnishing bail / surety bonds to the satisfaction of thelearned CJM / Trial Court / Duty Magistrate, concerned, provided he isnotrequired in any other case. The petitioner shall also abide by theconditions contained in Section 437(3) Cr.P.C. However, nothing statedhereinabove shall be construed as an expression of opinion on the meritsof the case.

8. Needless to mention, in case the petitioner is involved in anyother case under the NDPS, Act, 1985 while on regular bail in the instantcase, the prosecution would be at liberty to move an application forcancellation of bail granted to the petitioner in the instant case.

9. Petition allowed in the aforementioned terms.

03.08.2021

(B.S. Walia)
Judge

'Rajesh'

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No